

THE HONORABLE MARSHA J. PECHMAN
Noted on Motion Calendar
November 4, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRAVIS MICKELSON, DANIELLE H.
MICKELSON, and the marital community
thereof,

Plaintiffs,

v.

CHASE HOME FINANCE LLC, an unknown
entity, et al.,

Defendants.

No. 2:11-cv-01445-9

CHICAGO TITLE INSURANCE
COMPANY'S MOTION TO STRIKE AND
REPLY IN SUPPORT OF MOTION TO
DISMISS

I. REPLY

The Court should not consider Plaintiffs' Response to Chicago Title Insurance Company's ("Chicago") Motion to Dismiss ("Response") as it was not timely served and filed. Western District Local Civil Rule 7(d)(3) states: "Any opposition papers shall be filed and served not later than the Monday before the noting date." Accordingly, Plaintiffs were required to serve and file their Opposition by October, 31, 2011.

1 Plaintiffs filed their opposition two days late on November 2, 2011 (Dkt. #31).
2 Plaintiffs did not obtain an extension from the Court nor did they obtain leave to file a late
3 opposition.

4 The Court may decline to consider any paper that is not timely within the deadline set
5 by order or local rule. Moreover, according to the Ninth Circuit, failure to follow a district
6 court's local rules is a proper ground for dismissal. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.
7 1995). Thus, this Court should deem Plaintiffs' failure to timely file an opposition as consent
8 to granting of Chicago's motion.

9 Even if considered by the Court, Plaintiffs' Response does not defeat Chicago's
10 Motion to Dismiss. Plaintiffs maintain that an original trustee owes a duty of good faith to a
11 borrower after appointment of a successor trustee, yet they have provided no legal authority to
12 support their theory. The cases cited to by Plaintiffs concerning the "scope of the duty owed"
13 are irrelevant. Washington's Deed of Trust Act (the "Act"), RCW 61.24 *et seq.*, controls the
14 issues here.

15 The Act, however, does not recognize any cause of action against a prior trustee who
16 is not a party to foreclosure. Rather, RCW 61.24.010(4) states that "the trustee **or** successor
17 trustee has a duty of good faith to the borrower." (Emphasis added). Here, Plaintiff is
18 apparently alleging both Northwest Trustee Services **and** Chicago owe that duty. The statute
19 says otherwise. Once the appointment is made, any duty of the former trustee is extinguished.

20 Plaintiff cites *Bain v. One West Bank*, F.S.B., No. C09-0149JCC, 2011 U.S. Dist.
21 LEXIS 26318, *15-16 (U.S. Dist. W.D. Wash., Mar. 15, 2011) for the proposition that what
22 duty, if any, a trustee owes to a borrower is unknown at this time in the State of Washington.
23

1 Interestingly, the *Bain* court was deciding the issue of whether the **successor trustee** had a
2 duty of good faith to the borrower. There is no discussion of whether the original trustee
3 owed that duty. In fact, the original trustee in that case, Stewart Title Guarantee Co. was not
4 even a named party.

5 **III. CONCLUSION**

6 Plaintiffs' Response is untimely and should not be considered by this Court.
7 Regardless, Plaintiffs have no plausible claim for relief against Chicago. Accordingly,
8 Chicago's Motion to Dismiss should be granted.

9 DATED this 4th day of November, 2011.

10 FIDELITY NATIONAL LAW GROUP

11 /s/ Erin M. Stines

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CERTIFICATE OF SERVICE

I certify that on the date given below I electronically filed this document entitled CHICAGO TITLE INSURANCE COMPANY'S REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO DISMISS with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following persons:

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7
8 **SIGNED** this 4th day of November, at Seattle, Washington.

9 /s/ Erin M. Stines
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